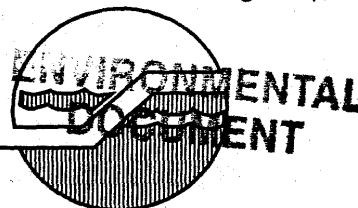


Patrick Crawford 642

Galveston Bay Conservation & Preservation Association

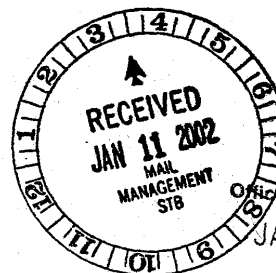
P.O. Box 323 Seabrook, Texas 77586



204634

January 9, 2002

VIA FAX: 202/565-9004 and Overnight Delivery
Mr. Vernon Williams, Secretary
Surface Transportation Board
ATTN: STB Finance Docket No. 34079
1925 K Street, NW
Washington, DC 20423-0001



ENTERED
Office of the Secretary

JAN 30 2002

Part of
Public Record

Dear Secretary Williams:
RE:

STB Finance Docket No. 34079
San Jacinto Rail Limited and Burlington Northern Santa Fe Company -
Construction and Operation of Track

Request for the STB to set infrastructure conditions and operating conditions on the
Application during the Exemption Proceeding

As a party to this proceeding, GBCPA did not file comments for the "transportation merits" determination during the 30-day time frame after the Applicants filed their application. If it had done so, it would have commented on the safety and transportation issues within the Board's public interest purview under 49 USC §10101. GBCPA chose not to oppose the proposed construction on the merits at that time for two reasons: 1) GBCPA lacked information concerning the current state of rail infrastructure and hazards along the proposed route; and 2) it was not GBCPA's place to suggest improvements or solutions without such information and without allowing the owner of the existing lines (which in this case differs from the proposed operator) to state their position.

Now that the Board has instituted an exemption proceeding to consider conflicting requests and information and discharge its public interest responsibilities, however, GBCPA feels that there are compelling reasons that the Board should act affirmatively to ensure that the obligations of 49 USC §10101 (8) are met. Therefore, GBCPA wishes to outline the reasons it feels that the Board should set infrastructure and operating conditions on the application at this stage of the proceeding, and why it should not otherwise grant an exemption without such conditions.

1. The proposed alignment and its traffic do not stop at State Highway 3 / Old Galveston Road.

Let us dispose of one issue at the start. The application clearly states that traffic will travel from BNSF's New South Yard in Houston to the Bayport Loop. This is the proper scope of the exemption proceeding, as well as, later, the environmental analysis. Until such time as BNSF modifies and resubmits the application, the scope of Board actions must encompass this route. For the exemption proceeding, the Board must consider transportation merits issues associated with operation over the existing tracks from the build-out location to New South Yard. Only by modifying and resubmitting the application can BNSF change the destination, whether it is to a new storage yard or an indeterminate number of points.

2. The Board should see to it that remnant safety and traffic problems in east and southeast Houston are solved regardless of exemption approval in this proceeding.

GBCPA finds it unfortunate that many areas of Houston have endured persistent rail safety and rail traffic problems, but it acknowledges that a combination of circumstances is likely to blame. However, the fact that distressed neighborhoods continue to bear the brunt of the impacts raises serious questions of environmental justice. Blocked crossings and parked trains lead to intolerable mobility restrictions on residents - restrictions that would not be tolerated in other communities. GBCPA feels similarly about the intolerable rail safety risks faced daily by our neighbors in these areas.

Filings and letters from the Greater East End Coalition for Community Concerns (GEECCC) in this proceeding dated November 10, 2001 and January 4, 2002 document continued unacceptable performance from both major carriers. This unacceptable performance has its root in the condition of east Houston's rail infrastructure, particularly along the former GH&H line (Old Galveston Road), the UP-Glidden rail subdivision, and at T&NO junction.

3. The Board has done heroic work leading to rail infrastructure improvements in Houston. Now is the time to ensure that the work is not undone.

Through its recently concluded five-year UP/SP general oversight proceeding, FD_32760_21, the Board oversaw many desperately needed investments in the region's rail infrastructure arising from the outcome of the Houston-Galveston oversight proceeding, FD_32760_26. The investments led to an improvement in service, improved the railroads' ability to attract capital, and that was the goal. At the conclusion, the railroads were admonished to cooperate and continue their capital investment programs so that the Board *does not have to intervene further*. Since BNSF has not included infrastructure improvements in its Application, and in fact vigorously contested the need for such improvements in its reply dated October 29, 2001, the Board should reflect on that history here.

GBCPA and the Board both recognize that rail competition generally promotes investment in infrastructure. However, applying that logic too rigidly to this Application leads to a "robbing Peter to pay Paul" dilemma without solving the real problem. The current rail infrastructure dedicated to chemical traffic in Houston, along State Highway 146, State

Highway 225, and the Ship Channel area, has been vastly improved, the Board must agree, since the UP/SP service crisis. This traffic passes near very few residential blocks until it enters Houston, where it sometimes encounters delay problems, especially on the East Belt, West Belt, and UP-Glidden tracks. A rerouting of traffic off existing vital routes along State Highways 146 and 225 may drain the capital necessary to maintain them without solving - and indeed, likely exacerbating - the traffic and safety problems in Houston.

Meanwhile, though BNSF would compensate UP somewhat for the new traffic on the former GH&H line (Old Galveston Road), UP has no incentive to improve the lightly used track for BNSF's trains, or to solve the existing unacceptable safety and traffic problems. These problems are particularly severe near the 3 schools that directly border the line (Cesar Chavez HS, Milby HS, and Stevenson MS) and the 15 other schools within a mile of it. Similarly, BNSF would find it difficult to raise enough capital from 1 train a day and approximately 23,000 cars each way annually¹ (see Application) to upgrade the additional 12 miles of the former GH&H track. GBCPA hopes that the Board will act to uphold provisions in the public interest (such as 49 USC §10101(8)) that prevent both railroads from walking away from a problem.

In some ways, the oversight proceeding represents a lost opportunity. No one from the railroads or the chemical companies ever asked the people of east Houston how they would solve the rail safety and traffic problems that plague their community. Everyone hoped that once the rail service problems were under control, reasonable investment by the railroads would start to alleviate the problem. The railroads have invested some, but GEECCC's filings, along with BNSF's refusal to agree to any infrastructure or operational conditions, demonstrate that the Board should not allow its work to come undone here. If BNSF defects from making reasonable investments now, we can assume the trend will continue in the future.

4. GBCPA believes that the following infrastructure improvement conditions should be added to the Application before the Board grants an exemption.

- A direct grade separated spur into New South Yard from the northeast quadrant of T&NO junction

BNSF currently blocks three arterial streets (Long Drive, Griggs Road, and Mykawa Road) when trains traveling east to west seek to enter New South Yard. Trains first cross Mykawa Road and Long Drive, then back over Long Drive and Griggs Road. When one considers the current level of road and rail traffic around the yard, along with the constant switching activity necessitated by the yard's small capacity, it is hard to imagine a more unsafe mode of operation. With a new spur, only Griggs Road would be crossed, and BNSF could avoid even that with grade separation. A bypass track currently under construction at New South Yard will not resolve current problems because it will not extend to T&NO junction. Instead, the Junction will remain a bottleneck. The proposal will further impair public convenience and mobility, as well as safety, if this condition is not adopted.

¹ GBCPA has reason to believe these figures misrepresent the traffic, given the Applicant's stated desire in the application to gain business from other Bayport Loop shippers and the obvious incentive to "grow the volume" if the permit is not conditioned properly.

- BNSF may not store cargo or park trains in such a way that they will block streets, other tracks, or crossings.

The federal requirement that trains not block crossings for more than 10 minutes without cause is not being enforced in Houston, as the GEECCC filings show. The Board must ensure that an enforceable plan to prevent rail traffic problems and their resultant safety risks accompanies the application. Adding traffic to the existing lines without such a plan only exacerbates currently impaired public convenience, mobility, and safety.

- At least two additional sidings must be constructed along the former GH&H line. In addition, a siding is needed, if right of way exists, along the UP-Glidden subdivision between Tower 30 and T&NO Junction due to currently heavy traffic levels that this proposal would add to.

The possibility of delays, parked trains, collisions, and blocked crossings between Houston and Galveston would decrease significantly if these conditions were adopted. Operation without necessary sidings is not consistent with the rail transportation policy of the United States (49 USC §10101(8)).

- Require UP and BNSF to start a process by which they will identify a timetable and cost sharing to upgrade the former GH&H line to welded rail

GBCPA believes that, given the reasonably foreseeable traffic (unless the Board agrees with us and operationally conditions the exemption for 1 train a day), the GH&H should be upgraded to welded rail between Graham Siding and Tower 30. The current jointed rail, which has aged considerably, will not handle the increased traffic BNSF will generate when it attracts sizable market share at Bayport. New rail, and where conditions have deteriorated such as near Sims Bayou/Berry Creek, rail bed and bridge reconstruction, is needed to allow the proposed traffic to operate over the line in a safe and expeditious manner.

- Signalize and improve crossings along the entire route

BNSF should undertake a series of crossing improvements and signal installations for rail and non-rail traffic, to address the increased incremental risk that its doubling (or more) of the current hazardous material traffic on the line will induce.

- Protect children attending the 15 schools along the route by requiring BNSF and UP to work with city of Houston to identify and construct pedestrian crossings over the lines along the route. BNSF and UP would share the cost of any such improvements, which are necessary to offset the increased risk of this proposal.

5. GBCPA believes that the following operational conditions should be added to the Application before the Board grants an exemption.

- Force disclosure of potential hazardous material traffic in the Application or condition approval to those currently disclosed

Applicants currently claim, on their website and in their application, that they will haul only 4 substances classified as hazardous materials. GBCPA does not believe that these are the only four, and requests that the STB utilize existing data from the current carrier to make a determination to that effect. In addition, the applicant's desire to competitively serve other nearby facilities and carry their cargo makes a hazardous materials condition appropriate at this time. The proposed route passes through neighborhoods currently experiencing severe adverse impacts from toxic releases. The Texas Natural Resource Conservation Commission recently announced that levels of butadiene at Milby Park, near Milby High School and not 1000 feet from the proposed route, exceed six times the acceptable level. The Board should not allow the hazardous materials risk to go undisclosed or unanalyzed, either now when it makes the public interest determination or later in the process.

- Condition the traffic to one train a day or find that it is reasonably foreseeable for the traffic to increase.

The Board cannot deny the likelihood of BNSF gaining market share far beyond that stated in the application, and thus rerouting more than one train a day worth of chemical and plastics traffic to its proposed line. Indeed, the Applicants are taking advantage of Board decisions and provisions that were designed to further the policy goal of enhanced competition. The Board knows full well, or could determine if it sought, that the level of volume described in the application is not reflective of 1) the current shipping situation at Bayport; 2) the traffic necessary for this operator to make necessary investments and reinvestments in the route and operate it safely, in accordance with the public interest at 49 USC §10101(3).

Regarding the second item, GBCPA does not have access to closely guarded information that would allow it to present a full case and thus satisfy its burden of showing that the project is not in accordance with the public interest. However, the Board should apply its own data and fulfill its role as a guardian of the public interest here. Securing less than one tenth of the daily traffic, as the Application and 2000 STB Waybill figures at Bayport indicate, does not permit a sufficient return to satisfy 49 USC §10101(3) and (8) based on STB's and the railroads' own statistics for:

- railroad capital costs
- Houston Terminal competitive service averages for per tank car and pellet car costs and hazardous materials charges, as well as labor and switching charges, and
- reinvestment needs per mile, when considered in addition to the charges BNSF must pay UP for operation over existing lines.

The Board should not simply take BNSF's word for one part of its public interest mission (promoting rail commerce) without providing for the others (e.g., public safety) in case the promises are broken. Once existing contracts expire and a more reasonable fraction of volume, far beyond that in the Application, shifts to BNSF, the promises clearly will be broken. Therefore, the Board should either condition the Application or acknowledge that as it stands, it does not reflect reasonably foreseeable conditions.

- Prohibit a common carrier link or build-in to the proposed Bayport Container Facility.

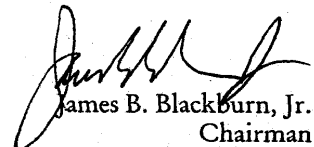
According to the Port of Houston Authority (the Applicant for Army Department Permit Application Number 21520) and the San Jacinto Partnership Applicants, the proposed container facility will be adequately served by the Port Terminal Railroad Association (PTRA). Both the UP and the BNSF will be able to operate over the PTRA into this facility, over tracks that curve in from the south. If the Applicants truly propose not to serve the proposed container port over any part of their proposed San Jacinto line - which as proposed will cross the PTRA just north of Port Road - it is in everyone's interest to settle this issue now, by conditioning the Application as such.

6. It is in the public interest to apply these conditions now, and by making the decisions now, the Board will provide much needed information that will assist the remainder of the process.

Applying conditions now provides the opportunity to minimize contentious and unnecessary debate over fundamental issues like the amount of traffic, which hazardous materials will be carried, and the connection to Bayport during the ongoing NEPA process. Likewise, the infrastructure needs are too fundamental to be potentially addressed as mitigation, when they should be addressed as part of promoting a safe rail transportation policy.

In conclusion, GBCPA wishes to reiterate its position, which remains unchanged. We are opposed to the San Jacinto Rail Line. It is a project that does not serve the public interest and introduces unnecessary risk into our communities and our daily lives. If the Board wishes to grant a construction exemption and await the results of an EIS, these infrastructure and operational conditions, at the least, should be in place from the start. No further action should be taken on the Application until they are. Similarly, if these conditions are not adopted, they should be fully and fairly analyzed in a Draft Environmental Impact Statement.

Sincerely,




James B. Blackburn, Jr.
Chairman

Galveston Bay Conservation and Preservation Association

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2002, I have caused to be served by first-class mail, postage prepaid, or a more expeditious means a true and correct copy of the foregoing Request to the following parties of record in STB Finance Docket case No. 34079.


James B. Blackburn, Jr.

Richard E. Wiecher
Sarah Whitley Bailiff
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Third Floor
Fort Worth, Texas 76131-0039

Erika Z. Jones
Robert M. Jenkins III
Adrian L. Steel, Jr.
Kathryn A. Kusske
Mayer, Brown, and Platt
1909 K Street NW
Washington, DC 20006

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001

Amy Carruth
Greater Houston Partnership
1200 Smith Street, Suite 700
Houston, TX 77002-4400

Anthony W. Hall, Jr.
City Attorney, City of Houston
City Hall Annex
900 Bagby, 4th Floor
Houston, TX 77002

Mr. Gregory Rincon
The Eastwood/Broadmoor Area CDC
P.O. Box 230209
Houston, TX 77223

J. Michael Hemmer
Covington and Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004

Richard J. Schiefelbein
Woodharbor Associates
7801 Woodharbor Drive
Fort Worth, TX 76179-3047

Mr. Jerry L. Martin
Director, Rail Division
Texas Railroad Commission
P.O. Box 12967
Austin, TX 78711-2967

Mr. John W. Johnson, Chairman
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

William W. Whitehurst, Jr.
W. W. Whitehurst and Associates, Inc.
Economic Consultants
12421 Happy Hollow Road
Cockeysville, MD 21030-1711